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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE G. RIOS,

Defendant and Appellant.

B191210

(Los Angeles County
Super. Ct. No. PA054341)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Charles L. Peven, Judge. Affirmed.

Karyn H. Bucur, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Robert F.
Katz and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

George E. Rios appeals from the judgment entered following his conviction by jury for making criminal threats against Sebastian Leal and related offenses. In Rios's sole contention on appeal he claims the evidence is insufficient to sustain this criminal threats conviction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Rios was charged by information with vandalism in violation of Penal Code section 594, subdivision (a), a felony (count 1), making criminal threats in violation of Penal Code section 422 (counts 2, 4 and 5), and stalking in violation of Penal Code section 646.9, subdivision (a) (count 3). The information also alleged Rios had previously suffered one prior serious felony conviction within the meaning of Penal Code section 667, subdivision (a)(1), and one prior serious or violent felony within the meaning of the "Three Strikes" law.¹

Summary of the Trial Evidence²

Rios became enraged when Olivia Leal wanted to end their relationship after several years of dating. From July to September 2004, he accused Olivia³ of seeing another man, and threatened and beat her on more than one occasion. Rios was incarcerated from September 23, 2004 to September 2, 2005. Upon his release, Rios cursed and threatened to kill Olivia in numerous telephone calls. He also harassed and stalked her. Olivia's brother, Sebastian, knew of Rios's violent behavior towards his sister and other family members.

¹ Penal Code sections 667, subdivisions (b)–(i), 1170.12, subdivisions (a)–(d).

² The summary is limited to the evidence introduced regarding count 4, in which Rios was charged with making criminal threats against Sebastian Leal.

³ Because Olivia and Sebastian Leal share the same surname, we will refer to them by their first names.

In December 2005, Rios came to the automobile repair shop where Sebastian worked. Sebastian was frightened when he saw Rios, having experienced problems with him in the past. Rios said Olivia owed him money, and he was there to collect it. Sebastian responded he did not believe Rios and, in any event, neither he nor his sister had any money to give him. Rios said, “You don’t know what kind of person I am. Jail is nothing for me.” Sebastian was afraid. Rios had demanded money from Olivia on prior occasions using similar threats, and he had hurt Olivia. Sebastian was afraid Rios would harm either his sister again or other family members. Sebastian told Rios he had very little money. Rios inquired as to the amount, and Sebastian answered “About a hundred dollars. If you take it, just leave us alone.” Rios said he would take the money. Sebastian obtained the cash from his toolbox, gave it to Rios, and said, “[J]ust leave my sister alone.” Rios, answered, “Yeah,” and the two men shook hands on their agreement before Rios left.

Arthur Bilbas, Sebastian’s coworker, was at the automobile repair shop when Rios showed up. In Bilbas’s presence, Rios demanded “his money” and hovered over Sebastian. Bilbas believed Rios was threatening Sebastian and was about to hit him so Bilbas armed himself with a tool. He then heard Rios say Olivia did not have to be “a snitch” or “a rat.” Sebastian asked Rios if he were afraid of going to jail, and Rios answered jail was like going to college; it was his “Harvard or Yale.”

Rios neither testified nor presented other evidence.

Verdict and Sentencing

The jury found Rios guilty as charged. In a bifurcated proceeding he admitted the special allegations. The trial court sentenced Rios to an aggregated state prison term of 13 years.

DISCUSSION

Rios challenges the sufficiency of the evidence to support his conviction for making criminal threats against Sebastian (count 4).

“In reviewing a challenge of the sufficiency of the evidence, we apply the following standard of review: ‘[We] consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.’ [Citations.] The United States Supreme Court has held: ‘[T]his inquiry does not require a court to “ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.” [Citation.] Instead, the relevant question is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citations.] The standard of review is the same in cases where the prosecution relies primarily on circumstantial evidence. [Citations.] The California Supreme Court has held, ‘Reversal on this ground is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].”’ [Citations.]”⁴

Penal Code section 422 makes it a crime to willfully threaten to kill or to seriously injure another person, with the specific intent that the statement be taken as a threat, where the threat is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat, thereby causing a person to reasonably be in sustained fear for his safety.⁵

⁴ *People v. Gaut* (2002) 95 Cal.App.4th 1425, 1430.

⁵ Penal Code section 422 provides in pertinent part that “[a]ny person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and

Rios told Sebastian, “You don’t know what kind of person I am. Jail is nothing for me.” Rios maintains these statements were too ambiguous to support the finding they conveyed to Sebastian a gravity of purpose and the immediate prospect of execution of any harmful act.⁶

However, a criminal threat need not be absolutely unequivocal, unconditional, immediate, and specific.⁷ Instead, “the jury [is] free to interpret the words spoken from all of the surrounding circumstances of the case.”⁸ In this case the jury could reasonably conclude Rios specifically intended to threaten Sebastian with harm: To the extent Rios’s threats were ambiguous; their meaning was clarified by the surrounding circumstances. Sebastian knew Rios had made similar threats in demanding money from Olivia, and Rios was frequently furious and physically abusive with her. Sebastian himself had experienced problems with Rios. Sebastian was also aware of Rios’s incarceration which made credible Rios’s suggestion the prospect of jail would not deter him from committing a crime. In the context of Rios’s violent history and ongoing rage,

specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety,” is guilty of making criminal threats. (See *In re George T.* (2004) 33 Cal.4th 620, 630, *People v. Toledo* (2001) 26 Cal.4th 221, 227-228.)

⁶ Compare: *People v. Garrett* (1994) 30 Cal.App.4th 962, 965 [“You better sit here on this god damned phone and listen to me, because when I get off this phone, I’m coming there to put a bullet in your head”]; *People v. Teal* (1998) 61 Cal.App.4th 277, 280 [“I’m going to kill you, you son of a bitch. When’s the court date?”].

⁷ Penal Code section 422 includes the qualifier “so” unequivocal, etc. which establishes the test is whether, in light of the surrounding circumstances, the communication was sufficiently unequivocal, unconditional, immediate, and specific as to convey to the victim a gravity of purpose and immediate prospect of execution. (*In re George T.*, *supra*, 33 Cal.4th at page 637; *People v. Bolin* (1998) 18 Cal.4th 297, 340; *In re Ryan D.* (2002) 100 Cal.App.4th 854, 861.)

⁸ *People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1341; *In re Ricky T.* (2001) 87 Cal.App.4th 1132, 1138 [Among such circumstances “any prior history of disagreements, or that either [the defendant or the victim] had previously quarreled, or addressed contentious, hostile, or offensive remarks to the other. [Citation.]”].

the jury could reasonably conclude his statements indicated a serious and deliberate purpose to harm Sebastian and/or family members.⁹

We also reject Rios's claim his threats lacked immediacy. The term "immediate," as used in Penal Code section 422, means that degree of seriousness and imminence which is understood by the victim to be attached to the future prospect of the crime being carried out.¹⁰ Penal Code section 422 does not envision an immediate ability to carry out the stated threat, but "only that the words used be of an immediately threatening nature and convey 'an immediate prospect of execution.'"¹¹ Here, it was the immediate prospect Rios would carry out his threats which prompted Sebastian's \$100 payment to secure Rios's agreement to leave him and his family alone.

Rios's assertion Sebastian did not suffer sustained fear because he only took the threats "offensively" is equally without merit. Rios overlooks Sebastian's uncontroverted testimony the threats caused him to fear for the safety of his sister and other family members.¹² The fact Sebastian negotiated an agreement for Rios "to be out of our lives"

⁹ See, e.g., *People v. Gaut*, *supra*, 95 Cal.App.4th at pages 1431-1432 [the defendant had a history of threatening and assaulting victim]; *People v. Mendoza*, *supra*, 59 Cal.App.4th at pages 1341-1342 [both the victim and defendant were gang members and threats were made following victim's testimony against the defendant's brother]; *People v. Martinez* (1997) 53 Cal.App.4th 1212, 1218; [The defendant and a victim were involved in a turbulent relationship], *People v. Allen* (1995) 33 Cal.App.4th 1149, 1151-1154 [same]; *People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1154-1156, 1159 [the defendant's statement that she would hire gang members to "get" or "take care of" the victim if he did not comply with her requests and a dead cat sent in the mail constituted threats].

¹⁰ *People v. Melhado* (1998) 60 Cal.App.4th 1529, 1538.

¹¹ *In re David L.* (1991) 234 Cal.App.3d 1655, 1660, e.g., *People v. Franz* (2001) 88 Cal.App.4th 1426, 1436 [Defendant's throat-slashing gesture and his "shushing noise" to two victims in police presence carried with it the requisite degree of immediacy, despite the defendant's inability to act on his threats at the moment.]; *People v. Gaut*, *supra*, 95 Cal.App.4th at page 1432 [In custody defendant referred to his pending release date and told the victim, "Somebody gone [sic] come see you," satisfied the immediacy requirement].

¹² Evidence Code section 411 [testimony of a single eyewitness sufficient to support a conviction]; see generally *People v. Rincon-Pineda* (1975) 14 Cal.3d 864 [credible

supported a reasonable inference Sebastian’s fear was sustained; it extended beyond “what is momentary, fleeting, or transitory.”¹³

Finally, Rios’s contention Sebastian could not have reasonably feared Rios who was not carrying a weapon or using threatening gestures discounts the undisputed testimony of Bilbas, an eyewitness to the confrontation. According to Bilbas, Rios’s combative behavior prompted Bilbas to arm himself, believing an attack on Sebastian by Rios was imminent. There was ample evidence to support Rios’s conviction for making criminal threats against Sebastian.

DISPOSITION

The judgment is affirmed.

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JOHNSON, J.

We concur:

PERLUSS, P. J.

WOODS, J.

testimony of a single complaining witness is sufficient to support verdict]. Sebastian’s testimony he took Rios’s statements as threats is also sufficient to support the finding Rios intended them to be taken as such. (See *People v. Mendoza, supra*, 59 Cal.App.4th at p. 1340.)

¹³ *People v. Allen, supra*, 33 Cal.App.4th at page 1156.